

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
COLUMBUS DIVISION

INN FOODS, INC.,

Plaintiff,

VS.

**TANNER ENTERPRISES, INC., and
MARTHA M. TANNER**

Defendants.

Case No.:

**AFFIDAVIT OF HILDA ANAYA IN SUPPORT OF PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER**

STATE OF CALIFORNIA)
) ss:
COUNTY OF SANTA CRUZ)

I, Hilda Anaya, being duly sworn, depose and state as follows:

1. I have been employed as an Accounts Receivable Clerk for Plaintiff Inn Foods, Inc. since 1996. In such capacity, I file this Affidavit in support of Plaintiff's Motion for Temporary Restraining Order against Defendant Tanner Enterprises, Inc.

2. I am authorized to make this Affidavit, and am competent to testify at trial about the statements made in this Affidavit.

3. Inn Foods seeks a TRO to preserve its beneficial interest in the assets of Tanner Enterprises that are impressed with the statutory trust created under the

Perishable Agricultural Commodities Act, 1930 ("PACA").¹

4. Inn Foods has held PACA License No. 19770254 since 1977.

5. Between September 2 and 16, 2010, Inn Foods sold perishable agricultural commodities ("Produce") to Tanner Enterprises, which are summarized in the chart attached as Exhibit "A." The invoices included in Exhibit "A" are true and correct copies of the original invoices issued by Inn Foods to Tanner Enterprises.

6. Each invoice was sent to Tanner Enterprises by U.S. Mail in the ordinary course of business on the "invoice date" shown on the invoices.

7. Tanner Enterprises received and accepted the Produce, and no adjustments have been made on the invoice amount except as listed.

8. The Produce Inn Foods sold to Tanner Enterprises was shipped or was expected to be shipped in interstate commerce, and, accordingly, is subject to the provisions of the PACA.

9. Tanner Enterprises has not paid for the Produce sold to it by Inn Foods as required by PACA, which has resulted in a loss to Inn Foods in the principal amount of \$37,343.32.

10. Beginning with Tanner Enterprise's inability to satisfy Inn Foods' PACA trust claims, I began investigating Tanner Enterprise's financial position. The information that I have discovered has led me to believe that Tanner Enterprises

¹ 7 U.S.C. §§499a-499t

does not have sufficient funds to fully satisfy Inn Foods' PACA trust claim in full as required by PACA. This dissipation of the trust is most commonly due to Tanner Enterprise's diversion of the PACA trust assets to the claims of other creditors which are subordinate to the PACA trust claims such as Inn Foods or to Tanner Enterprise's Principals' own personal use.

11. I have been trying to collect the amounts owed to Inn Foods since July or August, 2010. Martha Tanner is the President of Tanner Enterprises, and operates the business from her home. Between August and November, 2010, I would leave messages for Ms. Tanner on her cell phone, her home phone and on the business line. It would typically take her a few days for her to return my call, and she would usually tell me that she needs to check the Tanner Enterprises' books before she can send payment. Typically after some prodding by me and by the salesman, Ms. Tanner would send payment.

12. Inn Foods has not received any payments from Tanner Enterprises since early November, 2010.

13. Since that time, I have continued to call Ms. Tanner in an effort to collect payment. I spoke with her in December, 2010, and she said she would send payment. When payment was not received, I continued to call her each week. I spoke with Ms. Tanner in January, 2011, and she told me that the company was suffering financially, and she was having a hard time finding the money to pay Inn Foods. I have not heard from Ms. Tanner since, nor has payment been received.

14. Based upon the foregoing, I believe that Tanner Enterprises has failed to maintain sufficient trust assets to satisfy its obligations to Inn Foods, and is dissipating PACA trust assets.

15. In my experience, unless Tanner Enterprises is forced to comply with PACA, this dissipation will undoubtedly continue until any hope of recovery is lost, thereby rendering the trust protection under the PACA a meaningless formality.

I declare, under penalty of perjury as set forth in 28 U.S.C. §1746, the foregoing statements to be true and correct.

Hilda Anaya
Hilda Anaya
Accounts Receivable Clerk

STATE OF CALIFORNIA)
) ss:
COUNTY OF SANTA CRUZ)

SWORN TO AND SUBSCRIBED before me this 4th day of March, 2011 by Hilda Anaya, Accounts Receivable Clerk, and authorized representative of Inn Foods, Inc., and who: *(notary must check applicable box)*

☐ Is personally known to me

☒ Produced a current drivers license for identification

State CA Number B7506385

☐ Produced _____ as identification

My Commission Expires:

4-19-2012

JANE K. SO
Notary Public, State of California

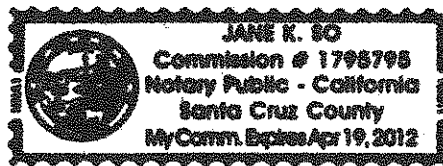


Exhibit A

Invoice Number	Transaction Date	Invoice Date	Payment Due Date 10 Days	Invoice Amount	No. of Days Overdue 3/4/2011	Accrued Interest* 18%	Trust Amount
25635	9/2/2010	9/2/2010	9/12/2010	\$ 18,671.40	173	\$ 1,592.95	\$ 20,264.35
26058	9/16/2010	9/20/2010	9/26/2010	\$ 18,671.92	159	\$ 1,464.08	\$ 20,136.00
Sub-Totals				\$ 37,343.32		\$ 3,057.03	\$ 40,400.35
							+ Estimated Attorney Fees \$ 7,500.00
							=TOTAL CLAIM \$ 47,900.35
							* Additional daily interest accruing from above date \$ 18.42
<u>Buyer agrees to pay all collection and attorney fees</u>							

Attention Accounts Payable

This is an original invoice

Remit payment from this copy



Please refer questions to:

Phone: (831) 724-2026

Fax: (831) 724-2029

REMIT TO:

INN FOODS INC.
P.O. BOX 353
SALINAS, CA 93902-0353
PHONE (831) 724-2026

Invoice Information

Date	9/02/2010
Invoice Number	GB 25635

S
o
l
d
t
o

2749
TANNER ENTERPRISES INC
5811 SATINWOOD DR
COLUMBUS, OH 43229

S
h
i
p
t
o

DICK'S COLD STORAGE
3080 VALLEY VIEW DR
COLUMBUS, OH

Ship Date		Sales Order		Purchase Order		F.O.B. POINTS		Terms		Freight		Ship V/A	
9/02/10		0019166		22242		TRAPPE, MD		1% 10 N 30		INV		SELLER ARRANGED	
Line	Quantity	Size	Description		GR	Label	Net Weight	Price	Per	Amount			
1	1,650	12/2#	ITALIAN BLEND			PACKERS	39600	.4715	LB	18,671.40			
			IQF										

"The perishable agricultural commodities listed on this invoice are sold subject to statutory trust authorized by section 5(c) of the perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

In the event collection action becomes necessary, buyer agrees to pay all costs of collection including attorney's fees and costs, as additional sums owed in connection with this transaction.

1. Report any discrepancies on this invoice to your broker or us immediately
2. Overages, shortages, or damages must be filed with your broker or with us within 72 hours after receipt of merchandise
3. Claims will not be honored without an Overages, Shortages & Damages report.

Invoice Total

18,671.40

CASH
DISCOUNTIF PAID WITHIN 10
\$ 186.71 DAYS OF 9/02/10

A late payment charge at the maximum legal rate
will be made on Invoices 30 days or more past due!

Visit us at: www.innfoods.com

Attention Accounts Payable
This is an original invoice
Remit payment from this copy



Please refer questions to:
Phone: (831) 724-2026
Fax: (831) 724-2029

REMIT TO:
INN FOODS INC. P.O. BOX 353 SALINAS, CA 93902-0353 PHONE (831) 724-2026

Invoice Information	
Date	9/20/2010
Invoice Number	GB 26058

S
o
l
d
T
O

2749
TANNER ENTERPRISES INC
5811 SATINWOOD DR
COLUMBUS, OH 43229

S
h
i
p
T
O

DICK'S COLD STORAGE
3080 VALLEY VIEW DR
COLUMBUS, OH

Ship Date		Sales Order		Purchase Order		F.O.B. POINTS		Terms		Freight		Ship VIA	
9/16/10		0019172		22242		TRAPPE , MD		1% 10 N 30		INV		SELLER ARRANGED	
Line	Quantity	Size	Description	GR	Label	Net Weight	Price	Per	Amount				
1	1,658	12/2#	ITALIAN BLEND IQF		PACKERS	39792	.4715 LB		18,761.92				

"The perishable agricultural commodities listed on this invoice are sold subject to statutory trust authorized by section 5(c) of the perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received."

In the event collection action becomes necessary, buyer agrees to pay all costs of collection including attorney's fees and costs, as additional sums owed in connection with this transaction.

1. Report any discrepancies on this invoice to your broker or us immediately
2. Overages, shortages, or damages must be filed with your broker or with us within 72 hours after receipt of merchandise
3. Claims will not be honored without an Overages, Shortages & Damages report.

Invoice Total	
CASH DISCOUNT	18,761.92
\$ 187.61	IF PAID WITHIN 10 DAYS OF 9/20/10
A late payment charge at the maximum legal rate will be made on invoices 30 days or more past due!	

Visit us at: www.innfoods.com